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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,316	10/16/2003	Donald E. Weder	8404.010	7811

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EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,316

Applicant(s)

WEDER, DONALD E.

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/16/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Priority

1. This application appears to be a division of Application No. 09/981,022 as opposed to a continuation, filed 16 October 2001. A later application for a distinct or independent invention, carved out of a pending application and disclosing and claiming only subject matter disclosed in an earlier or parent application is known as a divisional application or "division." The divisional application should set forth only that portion of the earlier disclosure which is germane to the invention as claimed in the divisional application.

Information Disclosure Statement

2. Receipt is acknowledged of an Information Disclosure Statement, filed 16 October 2003, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

Double Patenting

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 1-9 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-9 of copending Application No. 10/410,474. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder (US 4,733,521) in view of Eaton (US 2,265,636).

The Weder '521 reference discloses a covering forming apparatus in 9-11 and discussed at col. 11, lines 28+, which meets all of applicant's claimed subject matter. The embodiment shown in figures 9-11, does not explicitly disclose that the

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forming members (90) are biased upwardly, but figure 10 shows the members (90) in a home position and the discussion at col. 11, lines 52-57 -- "Thus, when pressure in a downward direction 102 is applied to the outermost end 94 of the bar 90, the bar rotates, or pivots, in a direction ..." implies that some force holding the members in a home position is overcome. For the sake of argument, the Weder '521 does not meet the recitation "upwardly biased". The Eaton reference discloses a cover forming apparatus in which a cover forming member (32, 34) is upwardly biased by a coil spring (40, 42) -- see page 2, lines 26-50. It would have been obvious to a person having ordinary skill in the art, at the time applicant's invention was made, to have modified the Weder '521 reference by having included a biasing element for the forming members in order to upwardly bias the forming members, as taught by Eaton, in order to return the forming members to their home position. Regarding claim 2, such is taught by Weder '521. Regarding claim 6, the embodiment shown in figures 5 and 6 of Weder '521 shows a roller at the end of each forming member, and it would have been obvious to a person having ordinary skill in the art, at the time applicant's invention was made, to have provided the now modified embodiment of figures 9-11 with a roller at the end of each forming member

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in order to assist in sliding the forming member against the cover.

7. Claims 3-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Weder (US 5,611,192).

The now modified Weder '512 cover forming apparatus does not disclose the details of the structure for holding the roll of sheet material or the cutting arrangement. The Weder '192 reference discloses a similar cover forming apparatus in which the roll of sheet material (80) is within the housing of the device, and that there is a cutting arrangement (110) for cutting the roll of sheet material into individual sheets. It would have been obvious to a person having ordinary skill in the art, at the time applicant's invention was made, to have further modified the Weder '512 cover forming apparatus to have included a housing which incorporates the roll of sheet material and a cutting arrangement for the roll of sheet material, as taught by Weder '192, in order to make the device adaptable to processing a plurality of pots in a rapid manner. The use of a sliding cutter, claim 9, is an obvious design choice since applicant has not disclosed that the use of a sliding cutter solves any stated

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problem or is for any particular purpose and it appears that the invention would perform equally well with a non-sliding cutter.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited on the attached form (PTO-892) are cited to show wrapping devices. All are cited as being of interest and to show the state of the prior art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Stephen F. Gerrity** whose telephone number is (703) 308-1279. The examiner can normally be reached on **Monday - Friday** from 5:30 - 2:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Rinaldi Rada**, whose telephone number is (703) 308-2187, may be contacted.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 3700 receptionist whose telephone number is (703) 308-1148.


Stephen F. Gerrity
Primary Examiner
Art Unit 3721

2 April 2004